

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

D.C., K.J. and	:	
K.C.,	:	
	:	September Term, 2002
	:	
Plaintiffs,	:	No. 003675
	:	
v.	:	
	:	
THE SCHOOL DISTRICT OF PHILADELPHIA,	:	
	:	CLASS ACTION
	:	
Defendant.	:	Control No. 012061
	:	
	:	

MEMORANDUM OPINION

C. DARNELL JONES,

Before the Court are: (1) the motion for summary judgment of D.C, K.J. and K.C. (collectively the “Plaintiffs”) and (2) the cross-motion for summary judgment and preliminary objections of the School District of Philadelphia (the “School District”). For the reasons more fully set forth below, the cross-motion for summary judgment and preliminary objections of the School District are **granted** in full. The Court finds in favor of the School District on counts I, II, III and IV and the Plaintiffs’ amended complaint is dismissed. Accordingly, the Plaintiffs’ motion for summary judgment is **denied**.

I. BACKGROUND

A. The Plaintiffs

The Plaintiffs in this class action purport to represent a broad class of students whose constitutional rights were violated by legislation passed by the General Assembly in an effort to combat violence and disruption in the public schools of Philadelphia. The Plaintiffs are minors residing in the school district of Philadelphia and are eligible to attend its public schools. Each plaintiff was previously adjudicated delinquent pursuant to 42 Pa.C.S.A. § 6341 and completed a residential placement that was court ordered as a result of the juvenile adjudication. After successful completion of their placement, the Plaintiffs sought to return to class in a regular day school program.¹

After attempting to enroll in their regular schools, the Plaintiffs were summarily barred from returning and ordered to report to a transition center instituted and run by the School District. After attending the transition center, the Plaintiffs were assigned to either an alternative education program for disruptive students or a non traditional school program. The individual circumstances of each plaintiff are set forth in detail below.²

1. D.C.

D.C. is a 16 year old student who attended 10th grade at Furness High School for the 2001- 2002 school year. During this time, he developed a truancy problem and received below average grades. In May of 2002, D.C. was arrested for the unauthorized use of an automobile and, in the same month, was adjudicated delinquent on that charge.

¹ For the purposes of this opinion, when the Court references “regular school” or “regular high school” it is referring to a regular day school program.

² The School District does not contest any of the facts as alleged in the Plaintiffs’ amended complaint for the purposes of the motions currently before the Court. All of the facts referenced are taken from the Plaintiffs’ amended complaint unless otherwise noted.

D.C. was placed in a residential placement for juvenile delinquents operated by Vision Quest until his discharge in August, 2002. At the time of his discharge, reports filed by Vision Quest indicated that D.C. “adjusted to the program” and “worked well with others.” Amended Complaint ¶14.

After his discharge, D.C. wished to attend a regular high school and play intra-scholastic basketball or football. When D.C. attempted to enroll in his regular high school he was advised that, pursuant to Title 24 Pa.C.S. § 2134, he was not eligible to return to school and must report to a transition center. As a result of his time spent at the transition center, D.C. was told he would have to repeat the 10th grade and that he could not attend a regular school; instead, two weeks after being notified he could not return to a regular school, he was assigned to an alternative education program. In September 2002, D.C. entered an alternate school for disruptive students operated by Community for Education Partners. Community Education Partners does not provide for intra-scholastic sports and is alleged to have more limited scholastic opportunities.

2. K.J.

K.J. is a 16 year old student who attended eighth grade at Thomas Fitzsimmons middle school for the 2000-2001 school year. During this time, he had many absences and was frequently tardy. In October 2000, K.J. was charged with unauthorized use of an automobile and adjudicated delinquent on that charge in January, 2001. K.J. was then placed in a residential treatment program until June, 2002. According to reports, K.J. attended classes, received passing marks and gained enough credits to complete ninth and tenth grade. His residential placement was described as a success.

When discharged from placement, K.J. sought to enroll in a regular high school. It was then he was told he could not return to a regular school and must report to a transition center for evaluation. K.J. spent one week at the transition center where it was determined that, while he could attend 11th grade, he must do so at an alternate school for disruptive students. Like D.C., K.J. was assigned to Community for Education Partners, a program alleged to have limited scholastic opportunities.

3. K.C.

K.C. is an 18 year old youth who began to display “serious truancy problem in his middle school years.” Amended Complaint ¶ 31. K.C. attended Germantown high school where he had numerous absences and was frequently tardy. In November of 2000, K.C. was arrested for possession of marijuana and entered a consent decree under which he was required to attend school. K.C.’s truancy continued and he was adjudicated delinquent on the possession charge. K.C. was then placed in residential placement at Summit Academy where he “assumed responsibility for his mistakes and demonstrated a good work ethic and attitude.” Amended Complaint ¶38. The reports from the placement center also noted he was never a behavioral problem and he displayed outstanding academic performance.

K.C. was discharged from placement in July of 2002 and he left with the intention of attending a regular high school to complete the 11th and 12th grades. At the time of his discharge, K.C. had acquired enough credits to enter the 11th grade. Instead of attending a regular school as planned, K.C. was directed to a transition center where he was told he was to be assigned to an after hours “twilight” program at Ben Franklin High School. K.C. was never given a starting date for the twilight program until several months

had passed. In the interim, he earned a GED and decided to find a job rather than return to a twilight program. K.C. was never offered the opportunity to return to a regular school program.

B. The Challenged Statute

The Plaintiffs are challenging the constitutionality of Title 24 Pa.C.S. § 2134 (the “Transition Statute”). Section 2134 is the codification of Act 88, which was passed by the General Assembly and signed into law on June 29, 2002. At the time the law was enacted, it provided for the following:

Section 2134. Placement of Certain Adjudicated Students.

(a) No student returning from placement or who is on probation as a result of being adjudicated delinquent under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who has been adjudged to have committed a crime under an adult criminal proceeding shall be returned directly to the regular classroom. Prior to returning such student to the regular classroom, the school district shall:

- (1) Place the student in a transition center operated by the school district for a period not to exceed four (4) weeks.
- (2) Develop a transition plan for the student that includes academic goals, identifies school and community services appropriate to the needs of the student and establishes terms and conditions the student must meet prior to returning to the regular classroom.
- (3) Place the student in an alternate education program as defined in Article XIX-C, in a private alternative education institution as defined in Article XIX-E, in a general education development program or in a program operating after the traditional school day as provided for in the transition plan developed pursuant to clause (2).

Pa.Legis.Serv.Act. 2002-88 (H.B. 4).

In December of 2002, the statute was amended by the General Assembly through Act 187. The amended statute is set forth below with the changes made by Act 187 noted.³

(a) No student returning from placement ~~or who is on probation~~ as a result of being adjudicated delinquent under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who has been adjudged to have committed a crime under an adult criminal proceeding shall be returned directly to the regular classroom. ~~Prior to returning such student to the regular classroom, the school district shall:~~

(b) Prior to returning such student to the regular classroom, the school district shall:

(1) Place the student in a transition center operated by the school district for a period not to exceed four (4) weeks.

(2) Develop a transition plan for the student that includes academic goals, identifies school and community services appropriate to the needs of the student and establishes terms and conditions the student must meet prior to returning to the regular classroom.

~~(3) Place the student in an alternate education program as defined in Article XIX-C, in a private alternative education institution as defined in Article XIX-E, in a general education development program or in a program operating after the traditional school day as provided for in the transition plan developed pursuant to clause (2).~~

(c) *The transition plan developed under subsection (b)(2) may provide for the student's direct return to a regular classroom where the underlying offense did not involve any of the following:*

(i) Possession of a weapon.

(ii) Possession, use or sale of controlled substances as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(iii) Possession, use or sale of alcohol or tobacco by any person on school property.

(iv) An act of violence as defined in section 1310-A(h).

(d) *In the case of a student whose transition plan does not include immediate return to the regular classroom, the student shall be placed in one of the following as provided for in the student's transition plan:*

³ Italic indicates added language while strikethrough signifies deletions.

- (1) *An alternative education program as defined in Article XIX-C. [FN4]*
- (2) *A private alternative education institution as defined in Article XIX-E.*
- (3) *A general education development program.*
- (4) *A program operating after the traditional school day.*

(e) (1) *Prior to the release of a student subject to this section from a residential or day treatment placement as a result of being adjudicated delinquent under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or returning from incarceration as a result of having been adjudged to have committed a crime under an adult criminal proceeding, the court shall provide to the person designated in charge of the school district's transition center the information required in the school notification provision under 42 Pa.C.S. § 6341(b.1) (relating to adjudication).*

(2) *The information shall be updated by the court with information pertaining to treatment reports and supervision plans or any other information deemed necessary by the transition plan and assure appropriate placement of the student.*

24 Pa.C.S.A. § 2134.

C. The Effect of Title 24 P.S. § 2134

The Transition Statute prevents certain students who were adjudicated delinquent and have completed a residential or day placement from immediately returning to a regular school setting. In order to fall within the ambit of the Transition Statute; a student must meet the following criteria:

- (i) Live in a school district of the first class;
- (ii) Be adjudicated delinquent under Title 42 Pa.C.S. § 6301 *et seq.* or has been adjudged to have committed a crime under an adult criminal proceeding⁴;
- (iii) Be returning from “placement” as a result of being adjudicated delinquent or adjudged to have committed a crime under the adult criminal code.

⁴ A child is adjudicated delinquent when a court determines beyond a reasonable doubt that the child committed the “acts by reason of which he is alleged to be delinquent . . .” 42 Pa.C.S.A. §6341. Generally speaking, a delinquent act is defined as an act designated a crime under local, state and federal laws. For a complete definition of a delinquent act, and important exclusions, parties should refer to Title 42 Pa.C.S. § 6302.

Any student meeting the aforementioned criteria is barred from *immediately* re-entering a regular school.⁵ 42 Pa.C.S.A. 21-2134(a). Instead of an immediate return, the statute requires that the student be placed into a transition center for a period of time not to exceed four (4) weeks.⁶ Id. at § 2134(b)(1). During this time, the School District alleges that the center's staff will evaluate the particular needs of the student and prepare a transition plan that contains the terms and conditions the student must meet in order to return to a regular classroom. Id. at § 2134(b). The overarching purpose of the transition center is to evaluate and assist the student in his transition from his or her placement to a regular school classroom. Id. at § 2134(b)(2).

The Transition Statute provides officials at the transition center who are developing the transition plan with several options for dealing with its charges. For students whose underlying offenses did not involve specified crimes listed in Section 2134(c), crimes dealing with weapons, controlled substances and violence, the administrators have the option of returning them to a regular school directly from the transition center. Students whose underlying offenses did involve the offenses in Section 2134(c) are barred from returning directly to a regular school from the transition center.⁷

For those students who are not permitted to return directly to a regular school pursuant to Section 2134(c), or who are otherwise deemed by the center not ready to

⁵ The Transition Statute is not applicable to Philadelphia charter schools. Charter schools of Philadelphia are exempted from certain elements of the School Code through 24 P.S. § 17-1715-(A)(1).

⁶ As of the time of oral argument the period of transition was five (5) days. At that time the School District advised the Court that, due to a recent funding increase, the transition period would be increased to ten (10) days.

⁷ None of the Plaintiffs' underlying offenses involved the criteria set forth in sub-section (c) and, therefore, the Plaintiffs do not have standing to challenge the constitutionality of this specific provision of the Transition Statute.

return to a regular school, they may be sent to one of the following programs: (1) a public or private alternate education program pursuant to Title 24 Pa.C.S. §§ 19-1903-C and 19-1903-E,⁸ (2) a general education development (“GED”) program, or (3) a program operating after the tradition school day (these programs shall be collectively referred to as “Alternate Education Settings”). 24 Pa.C.S.A. § 2134(d). Theoretically, under the Transition Statute, a student who successfully meets the conditions and goals of the transition plan should return to a regular school environment.⁹

D. The Plaintiffs’ Challenges

Prior to the amendment of the Transition Statute by Act 187, the Plaintiffs commenced this action by filing a civil action complaint against the School District. Subsequently, after Act 187 was amended, the Plaintiffs amended their complaint eliminating several of the counts that they originally asserted. The amended complaint contains four counts upon which the Plaintiffs assert the Transition Statute is unconstitutional:

Count I - the statute violates the Pennsylvania Constitution’s ban on special legislation;

Count II - the statute violates the equal protection clause of the United States Constitution;

Count III - the statute violates the due process clause of the Pennsylvania Constitution; and,

⁸ Section 19-1903-C and 19-1903-E concern Alternative Education Grants for schools operating under the Disruptive Student Programs.

⁹ No information has been provided to the Court addressing whether any students assigned to Alternate Education Settings have returned to a regular school. The School District states that as of January 22, 2003, of the 617 students who entered the transition program, all have been sent to an Alternate Educational Setting. See School District Motion for Summary Judgment and Preliminary Objections, Exhibit “D”. Given the recent enactment of the Transition Statute, and the even more recent amendments, the Court recognizes that not enough time may have passed to reflect successful transitions back to a regular school setting. However, the Court would have serious concerns if subsequent reports were to show that virtually no students were ever returned to a regular school.

Count IV - the statute violates the due process clause of the United States Constitution.

After several conferences with the Court, the parties decided that it was appropriate to file summary judgment pleadings at this stage of the litigation, even though no answer has yet been filed by the School District. The parties agreed that there are no material issues of fact in dispute and discovery would not provide any benefit or further bring facts to light which the Court should consider concerning the issues raised in their motions. See *Manzetti v. Mercy Hospital of Pennsylvania*, 565 Pa. 471, 776 A.2d 938 (2001)(holding summary judgment may be appropriate prior to the completion of discovery when additional discovery would not aid in the establishment of additional material facts). As a result, the Plaintiffs' filed a motion for summary judgment requesting that the Court rule the Transition Statute unconstitutional. The School District responded with its own cross motion for summary judgment and preliminary objections.

II. SUMMARY JUDGMENT

This court may grant Summary Judgment where the evidentiary record shows either that the material facts are undisputed, or the facts are insufficient to make out a *prima facie* cause of action or defense. *McCarthy v. Dan Lepore & Sons Co., Inc.*, 724 A.2d 938, 940 (Pa. Super. Ct. 1998). To succeed, a defendant moving for summary judgment must make a showing that the plaintiff is unable to satisfy an element in his cause of action. *Basile v. H&R Block*, 777 A.2d 95, 100 (Pa. Super. Ct. 2001). To avoid summary judgment, the plaintiff, as the non-moving party, must adduce sufficient evidence on the issues essential to its case and on which it bears the burden of proof such that a reasonable jury could find in favor of the plaintiff. *McCarthy*, 724 A.2d at 940.

In addressing the issue, this court is bound to review the facts in a light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Manzetti v. Mercy Hospital of Pittsburgh, 565 Pa. 471, 776 A.2d 938, 945 (2001). The plaintiff, must be given the benefit of all reasonable inferences. Samarin v. GAF Corp., 391 Pa. Super. 340, 350, 571 A.2d 398, 403 (1989).

III. DISCUSSION

The Court is fully cognizant of the crisis posed by violence and disruption in Philadelphia's schools. The School District has presented a stark and grim picture of the state of affairs with which the General Assembly was confronted when drafting the Transition Statute. It is clear that the Philadelphia school system is experiencing, on a daily basis, pervasive and undermining acts of disruption and violence within its classrooms. It is also clear that the School District has a legitimate interest in not only removing violent and disruptive students from regular classrooms, but also in ensuring that students returning from a juvenile placement are properly evaluated and prepared for their return to a regular classroom. The Transition Statute was passed by the General Assembly to address these serious concerns.

Even though faced with seemingly insurmountable problems or legitimate threats to the welfare of its children, the General Assembly must still act in accordance with the principles set forth in the Pennsylvania and United States Constitutions. Therefore, the Court must determine whether the General Assembly, in enacting the Transition Statute, overstepped its authority by impermissibly infringing upon the individual rights of the Plaintiffs.

The Plaintiffs assert the following theories upon which they request that the Court rule that the Transition Statute is unconstitutional:

1. The statute is “special legislation” passed in violation of Article III Section 32 of the Pennsylvania Constitution.
2. The statute violates the equal protection clause of the United States Constitution because it treats Philadelphia students different from other similar students in Pennsylvania without justification.
3. The statute violates the due process clause of the United States Constitution because the statute (a) is disciplinary in nature and the Plaintiffs were entitled to procedural due process before assignment to an Alternate Education Setting (b) placed a stigma upon the Plaintiffs and changed their legal status without providing procedural due process, and (c) creates an impermissible irrebutable presumption.
4. The statute violates the due process clause of the Pennsylvania Constitution because it affected a deprivation of the Plaintiffs’ reputations without procedural due process.

After careful consideration, the Court finds that the Transition Statute survives all of the Plaintiffs’ constitutional challenges. While the Court sympathizes with the instant non-violent Plaintiffs, it is the Court’s opinion that the Transition Statute is a proper exercise of The General Assembly’s legislative power and does not impermissibly infringe upon any constitutional rights of the Plaintiffs.

A. The Plaintiffs’ Burden In A Constitutional Challenge

The burden placed upon those challenging the constitutionality of a law of this Commonwealth is not easily overcome. Indeed, “[l]egislative acts of the general assembly enjoy a strong presumption of constitutionality and the party challenging the legislation bears a heavy burden of persuasion.” DeFazio v. Civil Service Commission of Allegheny County, 562 Pa. 431, 435, 756 A.2d 1103, 1105 (2000)(citing Consumer Party of Pennsylvania v. Commonwealth, 510 Pa. 158, 507 A.2d 323 (1986)). “An Act of the

General Assembly cannot be declared unconstitutional unless it clearly, palpably and plainly violates the constitution; hence, a heavy burden befalls a constitutional challenge to legislative enactment.” Wings Field Preservation Assoc. L.P. v. Commwlth of Pennsylvania Dept. of Transportation, 776 A.2d 311, 315 n.8 (Pa.Commwth.Ct. 2001)(citing Danson v. Casey, 33 Pa. Cmmwlth. 614, 382 A.2d 1238 (1978). With the Plaintiff’s burden in mind, the Court begins its analysis of their claims.

B. The Transition Statute Is Not Special Legislation In Violation of Section 32 of Article III of the Pennsylvania Constitution.

The Court finds that the Transition Statute is not special legislation passed in violation of Article III, Section 32 of the Pennsylvania Constitution (“Section 32”). Plaintiffs’ argument is premised on the fact that only students within the Philadelphia School District are affected by the Transition Statute, a result of Philadelphia being the only school district of the first class. The Plaintiffs believe that there is no legitimate or rational basis to distinguish between students in the Philadelphia School District and similar students residing in every other school district in the Commonwealth, regardless of size. Therefore Plaintiffs argue, Philadelphia was improperly singled out and the beneficiary of special legislation.

In order to properly address the Plaintiffs’ special legislation argument, an analysis of the interplay among several provisions of the Pennsylvania Constitution is required. In addition to referring to Section 32 itself, the Court must examine the constitutional basis upon which the General Assembly may make classifications. Article III, Section 20 specifically allows the General Assembly to make classifications based upon population. Furthermore, the General Assembly may make classifications based upon its power to regulate the health, safety and welfare of Pennsylvania citizens.

However, no matter what the basis of the classification, it appears that all laws making classifications must pass an equal protection analysis used in 14th Amendment challenges.¹⁰ The Court will begin its analysis with Article III, Section 32 of the Pennsylvania Constitution itself.

1. The Prohibition Against Special Legislation in Article III, Section 32.

Article III, Section 32 bans passage by the General Assembly of laws that are special or local in nature. The relevant text of Article III, Section 32 (hereafter referred to as “Section 32”) is as follows:

[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts.

* * *

Pa. Const. Art. III, s 32.¹¹ “[A] special law is the opposite of a general law. A special law is not uniform throughout the state or applied to a class. A general law is.” Wings Field, 776 A.2d at 316 (quoting Appeal of Torbik, 548 Pa. 230, 241, 696 A.2d 1141,

¹⁰ The Commonwealth Court in Wings Field noted that

Our Supreme Court has referred to Article III, Section 32 of the Pennsylvania Constitution as the equal protection portion of the constitution. In fact, our Supreme Court has analyzed Article III, Section 32 and federal equal protection claims simultaneously. However, the Court has also stated that the language of Article III, Section 32 is substantially different from the equal protection clause of the federal constitution, and that we are not free to treat that language as though it were not there.

Wings Field, 776 A.2d at 315 (citations omitted).

¹¹ Section 32 also prohibits the General Assembly from indirectly enacting “any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.” Pa. Const. Art. III, s 32.

1146 (1997)(quoting Hechert v. State Harness Racing Commission, 403 Pa. 440, 446-47, 170 A.2d 332, 336 (1961))).

Prior to 1873, the majority of laws passed within the Commonwealth were for the benefit of individuals and corporations. Wings Field, 776 A.2d at 316, n.10 (citing Dale F. Rubin, Public Aid to Professional Sports Teams A Constitutional Disgrace: The Battle to Revive Judicial Rulings and State Constitutional Enactments Prohibiting Public Subsidies to Private Corporations, 30 U.Tol.L.Rev. 393, 399-400 (1999)). In the seven years before the Constitution of 1874 was adopted, the General Assembly enacted 8,755 local or special acts and only 475 general laws. Zogby, 756 A.2d at 1088 (citing Robert E. Woodside, PENNSYLVANIA CONSTITUTIONAL LAW 321 (1985)).

Against this backdrop, the citizens of Pennsylvania chose to include within the Constitution of 1874 a proscription on special laws "for a very simple and understandable purpose - to put an end to the flood of privileged legislation for particular localities and for private purposes which was common in 1873 It was aimed at laws that were in the proper sense local and special." Haverford Township v. Siegle, 346 Pa. 1, 6, 28 A.2d 786, 789 (1942) (citation omitted). Therefore, "when Article III, Section 32 became part of Pennsylvania's constitution in 1873, its purpose was to prevent the General Assembly from creating classifications in order to grant privileges to one person, one company or one county." Wings Field, 776 A.2d at 316.

The Plaintiffs argue that the Transition Statute is special legislation because it is local or special to the Philadelphia School District. The Philadelphia School District is the only school district affected by this legislation because it is the only school district of the first class, due to its large population. While it is true that the General Assembly is

not permitted to pass special or local legislation, the Pennsylvania Constitution does permit the General Assembly to make certain classifications. The question then becomes whether the Transition Statute is a permitted classification, notwithstanding Section 32.

2. The Legislature May Make Classifications Based Upon Population Pursuant to Article III, Section 20.

Article III, Section 20 of the Pennsylvania Constitution (“Section 20”) specifically grants the General Assembly the power to classify “counties, boroughs, school districts, and townships according to population, and have all laws passed relating to each class, and all laws passed relating to . . . any class . . . deemed general legislation within the meaning of this Constitution.” Pa. Const. Art III, s 20. Therefore, under the authority of Section 20, the General Assembly is permitted to make classifications based upon population regardless of Section 32.

One of the General Assembly’s exercises of this power was the classification of Pennsylvania’s school districts based upon population. Title 24 P.S. § 2-202 classifies the school districts of the Commonwealth as follows:

Each school district having a population of one million (1,000,000), or more, shall be a school district of the first class;

Each school district having a population of two hundred fifty thousand (250,000), or more, but of less than one million (1,000,000), shall be a school district of the first class A;

Each school district having a population of thirty thousand (30,000), or more, but of less than two hundred fifty thousand (250,000), shall be a school district of the second class;

Each school district having a population of five thousand (5,000), or more, but of less than thirty thousand (30,000), shall be a school district of the third class.

Each school district having a population of less than five thousand (5,000) shall be a school district of the fourth class.

24 P.S. § 2-202. Pennsylvania law provides for changing classifications when a school district's population exceeds or dips below the requirements of its current classification. 24 P.S. § 2-205.¹² In such a case, the affected school district would move into the appropriate class the beginning of the next school year. Id.

The ability of the legislature to classify based upon population is clearly recognized by the courts of this state. "We note initially that the Legislature is permitted to treat cities of different sizes differently, particularly as classifications of cities and school districts based upon population are deemed general legislation and are specifically authorized by our state Constitution." Zogby, 828 A.2d 1079, 1089 (2003)(citing Pa. Const. Art. III, § 20; DeFazio, 562 Pa. at 436, 756 A.2d at 1105)).

Yet, there are limits to this power. Our Supreme Court has recognized that the General Assembly has constitutional authority to classify counties and townships by population; however, despite that authority, the Court has made clear that the General Assembly may not distinguish between counties within a class without a valid reason.

¹² Title 24 P.S. § 2-205 provides as follows:

Whenever it shall appear, in any case hereinafter enumerated, that the population of any school district in this Commonwealth is such that it should be included in another class of school districts, the Superintendent of Public Instruction shall issue a certificate to said school district to that effect, and such school district shall, with the beginning of the next school year after said certificate has been issued, become a school district of the class to which it properly belongs. The provisions of this section shall apply when:--

- (1) The Superintendent of Public Instruction, after the taking of each United States census, has canvassed the same, so far as it relates to the population of the several school districts, which he is hereby required to do;
- (2) Territory comprising a separate school district is annexed to a city, borough, or township, and the decree of the court or the vote of the electors effecting such annexation has been certified to the Superintendent of Public Instruction;
- (3) Territory has been annexed to a city, borough, town, or township, and enumeration of the population of such annexed territory has been made.

See Appeal of Torbik, 548 Pa. 230, 696 A.2d 1141 (1997); Hechert v. State Harness Racing Commission, 403 Pa. 440, 170 A.2d 332 (1961).

Furthermore, the size of the class is not determinative of whether the law is local or special. “A law’s special or general nature is not dependent upon the size of the class which is not treated uniformly it is determined by that treatment’s uniformity, or lack thereto, in relation to the entire class, notwithstanding the number of members therein.” Wings Field, 776 A.2d at 318.¹³ Therefore, while Article 20 may permit classifications based upon population, such classifications must not arbitrarily distinguish between members of the class. The record reflects that the classification herein, enabled the General Assembly to employ some measure of flexibility in dealing with the unique needs of this city of the first class.

3. **Classifications Based Upon Health, Safety and Welfare.**

In Harrisburg School District v. Zogby, our Supreme Court recognized the General Assembly’s ability to regulate based upon health, safety and welfare. Zogby, 828

¹³ The court in Wings further noted:

Uniformity is a foundational principle upon which our Constitution is based, both generally, and specifically in relation to local government. This uniformity is the crux of the issue at hand. When dealing with distinctions based upon population, Article III, Section 20 of the Pennsylvania Constitution makes clear that only "laws passed relating to *each class* . . . shall be deemed general legislation." (Emphasis provided). . . . The establishment of those classes by the General Assembly, pursuant to the grant of authority of Article III, Section 20, enables the General Assembly to employ flexibility in addressing the unique needs of diversely populated counties throughout the Commonwealth in such a way as to treat similarly populated counties with the uniformity that our Constitution requires.

Wings Field, 776 A.2d at 317.

A.2d at 1088. The Court also reaffirmed the evolution of Section 32 analysis and its relationship with equal protection principles.

Over the years, this prohibition, as well as other state constitutional provisions such as the Uniformity Clause, see Pa. Const. art. XIII, § 1, (prescribing uniformity in taxation), have been understood to include principles of equal protection under the law.

* * *

Equal protection principles do not, however, vitiate the Legislature's power to classify, which necessarily flows from its general power to enact regulations for the health, safety, and welfare of the community. Nor do they prohibit differential treatment of persons having different needs, provided the classifications at issue bear a reasonable relationship to a legitimate state purpose.

Zogby, 828 A.2d at 1088 (citations omitted).

Taking this broader approach to a Section 32 analysis, *i.e.* not necessarily focusing on class uniformity, the Court sets forth an overall Section 32 analysis that adopts the reasonable relationship test used in 14th Amendment challenges. “Indeed, it is now generally accepted that the meaning and purpose of the Equal Protection Clause of the United States Constitution . . . and the state Constitution’s prohibition against special laws . . . are sufficiently similar to warrant like treatment In this regard, classification, though discriminatory, will be deemed reasonable if any state of facts reasonably can be conceived to sustain it.” Id. (citing Curtis v. Kline, 542 Pa. 249, 255, 666 A.2d 265, 268 (1995)).¹⁴ Furthermore, a classification may be “struck down if it is based upon artificial or irrelevant distinctions used for the purpose of evading the constitutional prohibition. Id. at 1089.

¹⁴ In making this analysis, the Court is free to hypothesize reasons the legislature may have had for making the classification. Id. at 1088.

It is arguable that under this approach the class uniformity test under Section 32 and Section 20 was subsumed into an overall equal protection type analysis. As a result, whether a statute is special legislation under Section 32 does not ultimately depend upon uniform treatment, but upon whether the statute in question is reasonably related to a legitimate state interest. In any event, this Court finds that the Transition Statute survives the Plaintiffs' Section 32 challenge because it is uniform in treatment and reasonably related to a legitimate state interest.

4. The Transition Statute Is Constitutional Under Section 32.

The Transition statute is not special or local legislation in violation of Section 32. First, the Court finds that the statute is uniform in its treatment of its class members and, therefore, a legitimate exercise of classification by population. Second, using the Section 32/equal protection analysis, the Court finds that the statute bears a reasonable relationship to a legitimate state purpose. The Court further finds that the primary cases relied upon by the Plaintiffs in support of their position are distinguishable from the present case on a factual and legal basis.

a. The Transition Statute Is A Legitimate Classification Based Upon Population Under Section 20.

The Transition Statute is a legitimate exercise of the General Assembly's power to classify under Section 20. Plaintiffs do not argue that the Transition Statute does not treat members of the class uniformly. Granted, at this time Philadelphia is the only member of the class due to its population; however, having only one member of a class does not *per se* invalidate a statute. See Wheeler v. Philadelphia, 1875 WL 12964, 0 (Pa. 1875) (holding classifications are not wrong just because one city is the only member of the class); Harrisburg School District v. Zogby, 828 A.2d 1079 (Pa. 2003)(upholding

constitutionality of statute even though the class created had only one member). The special nature of the law is not dependant upon the size of the class but whether there is uniformity in the treatment of the class. Wings Field, 776 A.2d at 317.

The Court does recognize that having a single member in a class tends to raise eyebrows. But, as noted above, having one member is not alone sufficient to invalidate a statute. Moreover, when examining a classification that only includes one member, whether the class is open or closed plays a part in a constitutional analysis. For example, in Harrisburg v. Hickok, the General Assembly made a classification which contained only one member; however, the manner in which the classification was made effectively prevented any other member from joining the class.¹⁵ The legislation was subsequently redrafted so as to permit the possibility of additional members joining the class. When examining the amended legislation, our state Supreme Court specifically took note that it was possible for inclusion of other members.

Hence, the class is not “closed” but, open for other members to come in. See Harristown Dev. Corp. v. Commonwealth, Dept. of General Services, 532 Pa. 53 n. 9, 614 A.2d 1128, 1134 n. 9 (1992)(indicating that “a classification on one member is not unconstitutional so long as other members might come into that class” (citing Haverford Township v. Siegle, 346 Pa. 1, 6, 28 A.2d 786, 789 (1942))).

Zogby, 828 A.2d at 1090.

The Plaintiffs do not argue lack of uniformity among the class, or potential class members. Even if the Plaintiffs were to make such an argument, the Court finds that the Plaintiffs could not succeed. The Transition Statute is applicable to all school districts of

¹⁵ One of the criteria for membership in the class at issue was that the affected school district must be coterminous with a permanent seat of government. Zogby, 828 A.2d at 1083. Such a requirement naturally closed the class to new membership.

the first class. Although Philadelphia is the only member of the class, Title 24 P.S. § 2-205 provides the ability for schools districts to change classifications based upon an increase or decrease in population. If another school district were to join Philadelphia as a school district of the first class, all of the provisions of the Transition Statute would be equally applicable to the new school district. But, even though it is clear that there is uniformity of treatment under the Transition Statute, the Court must still determine whether the legislation on the whole bears a reasonable relationship to a legitimate state purpose.

b. **The Transition Statute Survives A Section 32/Equal Protection Analysis.**

The Court also finds that the classification made by the Transition Statute bears a reasonable relationship to a legitimate state purpose. There can be no dispute that Pennsylvania has a legitimate state interest in the education of its children. In fact, this charge is specifically given to the General Assembly by Pennsylvania’s Constitution.¹⁶ There can also be no dispute that disruptive and violent students have a deleterious effect upon the education process. Such students, in addition to hurting their own growth and potential, prevent other students from receiving the full benefits of a public school education. Therefore, there is clearly a legitimate state interest in ensuring that students returning from placement and those in a regular school program receive an education without the fear of disruption and/or violence.

The Plaintiffs argue that while there may be legitimate state interest involved, the classification made is not reasonable and is in essence arbitrary. This argument is based

¹⁶ “[T]he General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa.Const. Art. III, § 14.

on their assertion that there is no difference between adjudicated students returning from placement in Philadelphia and the same such students in every other county of Pennsylvania. Plaintiffs marginalize the effects of a large population arguing that the size of the Philadelphia School District is irrelevant in this analysis. Therefore, there is no distinction unique to the Philadelphia District to warrant such treatment.

The Court finds that the size of first class school districts clearly could provide sufficient grounds to warrant separate treatment. Moreover, population as a basis for classification is specifically provided for by the Pennsylvania Constitution. The General Assembly could have legitimately found that a large student population poses additional challenges and difficulties in administration and education not found in less populous school districts. Furthermore, the General Assembly may have recognized that students who have been adjudicated delinquent and who are returning from placement are more likely to be “lost” when returning directly to a regular classroom in a school district with a very large student population.

Therefore, the Court finds that it is logical and reasonable that the General Assembly decided that first class school districts warranted additional legislation to address not only violence and disruption in regular schools, but the welfare of those students returning from placement. To ignore population as a legitimate basis for classification in this case would be to deprive the General Assembly of the ability to address the needs of the school district with the largest population in the Commonwealth.¹⁷ Therefore, the Court finds that the Transition Statute bears a reasonable relationship to a legitimate state interest.

¹⁷ Contrary to the Plaintiffs’ assertions, the Court believes the General Assembly was provided with the power to classify based upon population by Section 20 for precisely such situations.

5. **The Primary Cases Relied Upon by the Plaintiffs are Distinguishable.**

The primary cases upon which the Plaintiffs ultimately rely upon in support of their argument are distinguishable from the present case. In these cases, the statutes in question were either not uniform in treatment and did not bear any reasonable relationship to a legitimate state interest or were uniform in treatment, but still did not have a reasonable relationship to a legitimate state interest.

i. **Wings Field Preservation Assoc. L.P. v. Comm. of Pennsylvania Dept. of Transportation**

The statute in question in Wings Field gave Montgomery County special control over the expenditure of funds regarding airport operations and development. Wings Field, 776 A.2d at 314. The manner through which this privilege was given was through a legislative classification, which singled out counties of the second class A with a population over 675,000. Of the three second class A counties, only Montgomery County met the statute's criteria. Id. at 318. The Commonwealth Court, first examining the issue of uniformity, found that the challenged legislation did not establish a new class or modify an existing class. Instead, the legislation vested in "one county a singular and unique power that cannot be exercised by all the members of the class to which that one county has already been legislatively assigned. Id.

After determining there was not uniformity in treatment, the Commonwealth Court looked to see if there were any peculiarities that would distinguish Montgomery County from the other counties *within the class* so as to justify its distinction. Id. at 319. "It is such manifest peculiarities within a legislative class that provide the only permissible justification for a legislative override of the uniformity required by Article

III, Section 32.” Id. at 317. Finding that Montgomery County had no special distinction to warrant its special treatment, the Court held that the statute violated Section 32. The Court also continued its analysis, after conclusively finding the statute unconstitutional for its lack of uniformity without justification, that the statute also violated equal protection principles because it did not have a reasonable relationship to a legitimate state purpose.

Montgomery County lost because it could not articulate a legitimate reason to justify being singled out for special treatment in its class. In the present case, the Court not only finds that the Transition Statute is uniform in treatment, but that the School District has also presented compelling arguments as to why school districts of the first class are unique. Therefore, the Transition Statute is uniform in treatment and reasonably related to a legitimate state interest.

ii. Harrisburg v. Zogby

Plaintiffs originally cited to the Commonwealth Court case of Harrisburg v. Hickok, 789 A.2d 797 (Pa.Comwlth. 2002) in support of their argument. Subsequent to the filing of the Plaintiffs’ motion, Hickok was reversed by the Pennsylvania Supreme Court in Harrisburg v. Zogby. 828 A.2d 1079.¹⁸ The statute in question in Zogby/Hickok, was directed at school districts of the second class that (1) had low test performance, (2) was coterminous with a city of the third class that had opted to be governed by mayor council form of government and, (3) had a population of over

¹⁸ At the time the case reached the Pennsylvania Supreme Court, the Secretary of Education for Pennsylvania had changed. Therefore, a substitution was made replacing Eugene W. Hickok with Charles B. Zogby.

45,000.¹⁹ Id. at 1082. Under the statute, the Harrisburg School District was the only member meeting these requirements.

The statute clearly did not treat all school districts of the second class uniformly; however, the Supreme Court concluded the statute was not in violation of Section 32 because: (1) the affected classes were unique among its members in that mayor-led models of control combined with home rule paradigm were involved, (2) the General Assembly could have concluded that the affected class of school districts would have been the perfect place to start a pilot program, and (3) although the legislation affects a narrow class of school districts, i.e. not uniform treatment, that it was reasonable for the General Assembly to initially start the program with a small group. Id. at 1089. The Court found that “under these circumstances, we do not believe that the class defined by Act 91 is based upon artificial or irrelevant distinctions utilized merely to evade the constitutional prohibition on special legislation.” Id. 1091.

Therefore, although the statute in Zogby did not treat its member uniformly, the Court found that the statute was still reasonably related to a legitimate state interest. Here, unlike the statute in Zogby, the Transition Statute not only treats its member uniformly, it also bears a reasonable relationship to a legitimate state interest.

iii. DeFazio v. Civil Service Commission of Allegheny County

Lastly, the Plaintiffs refer to DeFazio v. Civil Service Commission of Allegheny County. 562 Pa. 431, 756 A.2d 1103. In Defazio, the statute enacted was directed at the sheriff’s departments of municipalities of the second class and required the sheriff’s departments to enact additional civil service regulations when no other sheriff’s

¹⁹ As discussed earlier, the statute originally contained a requirement that the county must be coterminous with a city of the third class which contains the permanent seat of government. The statute was struck down by the Courts as special legislation.

departments of other county classes were required to do so. Id. at 1104. As in the present case, there was only one member of the class at issue, Allegheny County. Even though the statute would have treated all members of the class uniformly if more counties were to join the class, the statute was struck down as unconstitutional.

Recognizing that the General Assembly is permitted to classify by population, our Supreme Court still ruled that the statute was unconstitutional because there was no reasonable basis whatsoever for the law.²⁰ Id. 562 Pa. at 437, 756 A.2d at 1106. Allegheny County argued that the unique attributes of the Sheriff’s office warranted treatment different from other similar offices in counties elsewhere. The Court was unconvinced by this argument and found that under the reasonable relationship test, “the distinction created by this legislation bears no fair or reasonable relationship to the object of the legislation and bears no relationship to the distinction of Allegheny County as a county of the second class.” Id.

In the present case, the Court holds that the Transition Statute meets the reasonable relationship test. The Transition Statute bears a reasonable relationship to the distinction of Philadelphia as a first class school district.

C. The Transition Statute Does Not Violate the Equal Protection Clause of the Pennsylvania Constitution.

The Court finds the Transition Statute survives the Plaintiffs’ state equal protection challenge. Article I, Section 26 of the Pennsylvania Constitution provides for the following:

§ 26. No discrimination by Commonwealth and its political subdivisions

²⁰ The Court notes that the statute was not struck down simply because Allegheny County was the only member of the class.

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

Initially, the Court must address the specific claims that the Plaintiffs are making under their “equal protection” challenge. Count II of the Plaintiffs amended complaint challenges the Transition Statute under Article I, Section 26 of the Pennsylvania Constitution. In paragraph 109, the Plaintiffs allege the following:

Section 2134 violates Article I, § 26, in that it denies to children who have been adjudicated delinquent, and who attend school districts of the first class, a right afforded to all other delinquent children in the Commonwealth, i.e., the right to attend regular schools in the absence of a finding, following a due process hearing, that the student has violated school rules and that removal from regular school is warranted.

Amended Complaint, ¶109. Based upon this paragraph it appears to the Court that the Plaintiffs are asserting that the Transition Statute discriminates against students in the Philadelphia school district by forcing its students to undergo the transition process when all other school districts in the Commonwealth are not required to do the same to their students. Therefore, the equal protection rights of the students are violated because they are treated differently without justification.

Yet, in the Plaintiffs’ brief in support of their motion for summary judgment, the equal protection argument is presented in radically different terms. The Plaintiffs argue in their brief that the equal protection violation is the alleged deprivation of the Plaintiffs’ reputation without due process. Plaintiffs further argue that because reputation is a fundamental right under the Pennsylvania Constitution, the classification made by the

Transition Statute must be examined under a strict scrutiny test. As the Court will discuss below, there is a fatal disconnect in this argument.

It is true as the Plaintiffs assert that depending upon the interest or class involved, government classifications are subject to one of three levels of constitutional scrutiny. “Where the challenge is on equal protection grounds, we must first determine the level of scrutiny which should be applied to the classification at issue.” Donahue v. Public School Employees' Retirement System of Com., 834 A.2d 655, 658 (Pa.Cmmwlth. 2003).

[T]here are three different types of classifications calling for three different standards of judicial review. The first type--classifications implicating neither suspect classes nor fundamental rights--will be sustained if it meets a "rational basis" test. In the second type of cases, where a suspect classification has been made or a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny. Finally, in the third type of cases, if "important," though not fundamental rights are affected by the classification, or if "sensitive" classifications have been made, the United States Supreme Court has employed what may be called an intermediate standard of review, or a heightened standard of review. James, 505 Pa. at 145, 477 A.2d at 1305-06 (citations omitted). The three-tiered standard for reviewing equal protection claims is the same under both State and federal Constitutions. Id. at 144, 477 A.2d at 1305.

Id. (quoting James v. Southeastern Pennsylvania Transp. Auth., 505 Pa. 137, 142, 477 A.2d 1302, 1304 (1984),

The Plaintiffs’ argument as laid out in their brief is that the equal protection violation is the alleged deprivation of the Plaintiffs’ reputation without due process, and thus, as a fundamental right merits the “strict scrutiny test.” However, the record supports this Court’s conclusion that reputation is not the foundation upon which the classification is made by the Transition Statute. The classification made by the

Transition Statute is based upon the Plaintiffs being members of a first class school district, which classification is in turn based upon population. Therefore, the equal protection argument as set forth in the amended complaint is the proper context in which to analyze the Transition Statute. In the amended complaint the Plaintiffs assert that the Transition Statute fails to treat the students in the Philadelphia School District equally with all other students residing in the Commonwealth. Students living in other school districts who return from placement are permitted to immediately return to a regular school and are not required to be evaluated by a transition center.

Since the classification by the Transition Statute is not targeting suspect classifications or based upon a fundamental right, the strict scrutiny test is not applicable. Moreover, the classification is also not based upon grounds which would warrant intermediate scrutiny. As a result, the rational basis test is the proper level of scrutiny to be applied.

As discussed earlier, the education of its children is a legitimate state interest. The Plaintiffs argue that while there may be legitimate state interest involved, the classification made by the Transition Statute is arbitrary and not rational. This argument is based on their assertion that there is no difference between adjudicated students returning from placement in Philadelphia and the similarly situated students in every other county of Pennsylvania.

The Court finds that there is a difference between students in first class school districts and those in other classes. The size of the Philadelphia School District poses unique challenges to not only the school district in administration, but also to the delinquent students themselves. The General Assembly could have made a reasoned

decision that the chances of a successful return by delinquent students were harmed in a large school population because they were less likely to receive the individual attention that they required. Thus, these students may not only fail to adjust or succeed in a regular classroom setting, but also cause disruption to the other students' learning environment. Therefore, because the Plaintiffs are members of such a large school district, which poses unique challenges to administrators, teachers and the students themselves, the Court finds that there is a rational relationship between the Transition Statute and school districts of the first class.

D. The Transition Statute Does Not Violate the Due Process Clause of the Federal Constitution

The Transition Statute does not violate the due process principles of the United States Constitution on the bases that the Plaintiffs' set forth in their pleadings. The Plaintiffs' due process challenges under the Federal Constitution are broken down into three arguments. First, the Plaintiffs argue that they were entitled to procedural due process prior to their transfer to an Alternate Education Setting. Second, Plaintiffs assert that their placement in an Alternate Education Setting resulted in a stigma being placed upon them without the required procedural due process. Third, and last, the Transition Statute creates an irrebuttable presumption that the Plaintiffs are "disruptive students", even though their underlying juvenile adjudications had nothing to do with disruption in school. The Court has carefully considered all of the Plaintiffs' arguments and concludes that the Transition Statute survives these challenges.

1. The Transition Statute Does Not Affect The Equivalent of a Disciplinary Transfer.

The Court begins its analysis by determining what constitutional interest the Plaintiffs assert is being deprived without due process under this challenge. The essence of the Plaintiffs' argument is that they believe their assignment to an Alternate Education Setting is the equivalent of a disciplinary transfer and; thus, they were deprived of their entitlement to an education in a regular school setting without procedural due process protections. In order to agree with the Plaintiffs' theory, the Court would have to find that their assignment to an Alternate Education Setting is the equivalent of a disciplinary transfer.

It is well settled law that the United States Constitution does not provide the Plaintiffs with a fundamental right to public education. "A right to education . . . is not among the rights which are either explicitly or implicitly guaranteed under our Federal Constitution and it is not, therefore, considered to be a fundamental right or liberty." Lisa H. v. State Bd. of Ed., 67 Pa.Cmwlth. 350, 355, 447 A.2d 669, 672 (1982). However, a state may choose to provide its children with a public education, and, once this is done, it has established a property interest protected by the Fourteenth Amendment. Id.; See also Goss v. Lopez, 419 U.S. 565 (1975).

It is undisputed that Pennsylvania children are the recipients of a statutory entitlement to a public education. "[T]he right to a public education in Pennsylvania is not a fundamental right but rather, a statutory one and that as such, it is limited by statutory provisions." Lisa H., 67 Pa.Cmwlth. at 356, 447 A.2d at 673 (citing O'Leary v. Wisecup, 26 Pa.Comwlth. 538, 364 A.2d 770 (1976)).²¹ This statutory right flows from

²¹ Title 24 Pa.S. § 13-1301 provides in relevant part provides for the following:

our state constitution which explicitly mandates that “the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa.Const. Art. III, § 14.

The effect of this mandate upon the courts is that when “ ‘considering laws relating to the public school system, courts will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, but whether the legislation has a reasonable relation to the purpose expressed in Article X, Section I (the predecessor provision to Article III, section 14). . .’ ” Danson, 484 Pa. at 426, 399 A.2d at 365 (quoting In Teachers’ Tenure Act Cases, 329 Pa. 213, 224, 197 A. 344, 352 (1938)).

The Plaintiffs equate their assignment to an Alternate Education Setting to a disciplinary transfer. As such, the Plaintiffs argue that they should be afforded the same procedural due process protections other students receive when they are transferred, suspended or expelled from school. The School District argues that the assignment of the Plaintiffs to and from the transition center is administrative in nature and not disciplinary. It is the School District’s position that the disciplinary removal from school occurred when the Plaintiffs were adjudicated delinquent and ordered to attend residential or day placement. Therefore, the juvenile adjudication provided all the necessary due process protections before the Plaintiffs removal from the school system for placement.

The primary cases cited to by the Plaintiffs all deal with factual scenarios that are significantly different than the present case. See Goss v. Lopez, 419 U.S. 565 (1974)(holding students suspended for misconduct must be afforded some form of

Every child, being a resident of any school district, between the ages of six (6) and twenty-one (21) years, may attend the public schools in his district, subject to the provisions of this act.

procedural due process); Everett v. Marcase, 426 F.Supp. 397 (E.D.Pa. 1977)(holding students who are subject to lateral transfers for disciplinary reasons must be afforded due process protection); Jordan v. School District of the City of Erie Pennsylvania, 583 F.2d 91 (3d Cir. 1978)(holding consent decree relating to expulsion, suspension or transfer of students met constitutional requirements).

The aforementioned cases dealt with students who were attending a regular school and were to be transferred, suspended or expelled based upon their conduct. The material and controlling difference in this case is that the Plaintiffs were not in a regular school setting when they were assigned to the transition center and the Alternate Education Setting. The Plaintiffs are making the unwarranted assumption that upon release from their placement they were, by default, returned to a regular school setting. Instead, the Court finds that the Plaintiffs upon release were not yet returned to the regular school setting, thus, necessitating their need to re-enroll and seek entry into their old schools.

It was not the Transition Statute that removed the Plaintiffs from their regular classroom setting; rather, the removal occurred at the time the Plaintiffs were adjudicated delinquent and ordered to placement. As a result, the Plaintiffs were already removed from the regular classroom setting at the time they sought reentry into their regular schools. What the Transition Statute does is operate as an administrative mechanism that evaluates and places the students in the appropriate educational setting based upon their particular needs and abilities.

Additionally, the Transition Statute is not denying the Plaintiffs an education. Instead, the Transition Statute re-integrates students who were already removed from a regular class environment into a transitional setting, calculated to enhance the move from

resident institutionalization to a regular school classroom. The “mandate of Article III, Section 14 . . . does not confer an individual right upon each student to a particular level or quality of education but, instead, imposes a duty upon the *legislature* to provide for the maintenance of a thorough and efficient system of public school throughout the Commonwealth.” (emphasis in original) Agostine v. School District of Philadelphia, 106 Pa.Cmwth. 492, 497, 527 A.2d 193, 195 (1987)(citing Danson v. Casey, 484 Pa. 415, 399 A.2d 360 (1979)).

The Plaintiffs are still receiving a public education. The fact that this education is not occurring where the students prefer is not a sufficient basis to strike down the statute. Moreover, the Court notes that: (1) the Transition Statute does provide an opportunity to immediately return to a regular school from the center, and (2) the overarching goal of the statute is to return the student to a regular classroom setting. Therefore, the Court finds that Plaintiffs’ assignment to the Transition Statute and an Alternate Education Setting is not a disciplinary transfer and no procedural due process is warranted.

2. The Transition Statute Survives the Stigma Plus Test

The Transition Statute does not violate federal due process principles under the “stigma plus test”. The Plaintiffs argue that the Transition Statute violates federal due process principles because: (1) the statute placed a stigma upon the Plaintiffs and (2) altered the Plaintiffs’ legal status by transferring them out of a regular school environment and, therefore, depriving them of a property right.

The leading case addressing stigma in a federal context is Paul v. Davis. 424 U.S. 693 (1976). In Paul v. Davis, our United States Supreme Court held that there is no constitutional interest in reputation alone and; instead, there must be additional

constitutional interest or entitlement that is implicated. Id. at 711. Therefore, the fact that the Plaintiffs' reputations may be affected by the Transition Statute is not enough to strike down the statute. The Transition Statute must also affect some change or alteration in the Plaintiffs' legal status.

Regardless of whether or not the Court finds that a stigma attached to the Plaintiffs by virtue of their being sent to an Alternate Education Setting, the Court finds the Plaintiffs do not meet the second prong of the stigma plus test. The Transition Statute does not cause a deprivation of a property interest as recognized by Goss and its progeny. As discussed above, the Transition Statute is not affecting a disciplinary measure but, instead, is determining where the students should be placed upon their application to return to school. Therefore, there was no additional constitutional interest or entitlement implicated in conjunction with the alleged harm to their reputation.

3. The Transition Statute Does Not Create An Irrebuttable Presumption

The Transition Statute does not impermissibly create an irrebuttable presumption. As a preliminary matter, the Court notes that the School District argues that the irrebuttable presumption test was abandoned by United States Supreme Court in Weinberger v. Salfi, 422 U.S. 749, 777 (1975).²² The School District asserts that the doctrine was replaced by a substantive due process analysis based upon the protected right implicated. The Attorney General of Pennsylvania also believes the irrebuttable presumption test was abandoned and cites to a Third Circuit Court of Appeals case, Malmed v. Thornborough, 612 F.2d 565 (3d Cir. 1979). The Court finds that the School

²² The Court notes that the School District gives this argument only summary treatment in a footnote contained in its brief.

District and Attorney General are premature in their announcement of the demise of the irrebuttable presumption doctrine.

The confusion surrounding the irrebuttable presumption test was noted by the Commonwealth Court in Gondelman v. Comm. of Pennsylvania, 120 Pa.Cmwlth. 624, 550 A.2d 814 (1989). The Gondelman court recognized that there existed a “disagreement concerning (1) viability and application of the “irrebuttable presumption” doctrine” and (2) application of the equal protection rational basis test.” Id. 120 Pa.Cmwlth. at 637, 550 A.2d at 820. However, the court did not decide these issues because it felt that an evidentiary record was first needed. Id. An appeal was taken to the Pennsylvania Supreme Court which ruled that an evidentiary record was not needed. Yet, the Court appears to have decided the case without discussing the current viability of the irrebuttable presumption doctrine. See Gondelman v. Comm. of Pennsylvania, 520 Pa. 451, 554 A.2d 896 (1989).

However, in Department of Transportation v. Clayton, the issue was confronted head on by our state Supreme Court. 546 Pa. 342, 684 A.2d 1060 (1996). First, the Court in Clayton noted that the United States Supreme Court’s decision in Salfi, relied upon by the School District, only limited or altered the irrebuttable presumption doctrine in cases involving similar social welfare legislation.

[T]he United States Supreme Court somewhat limited the scope of the ‘irrebuttable presumption doctrine’ as set forth in the *Bell* and *Vlandis* line of cases, but did so explicitly only for types of social welfare legislation similar to that at issue in *Salfi*.

Id. 546 Pa. at 349, 684 A.2d at 1063 (citations omitted). The Court went on to note that it was not until Michael H. v. Gerald D., 491 U.S. 110 (1989), that the issue of whether the

irrebuttable presumption doctrine dealt with procedural or substantive due process was discussed by the United States Supreme Court. The Clayton Court stated:

For purposes of the present controversy, it is important to note that none of these decisions of the Supreme Court prior to *Michael H.* even discussed whether the analysis being employed was strictly substantive or that of procedural due process. Indeed, it may be that an analysis of such presumptions by its very nature eludes such precise cataloguing. The presumption, it seems, is the substance of the statute or regulation at issue, which presumption necessarily implicates process given its conclusiveness. For these reasons, then, we find the Commonwealth Court's limitation of its discussion as to the precise due process principle at issue under this doctrine to be not only unnecessary but also ill advised. While we do not believe it wise to pigeonhole whether an analysis of an irrebuttable presumption is solely one of substantive or procedural due process . . .

Id. 546 Pa. at 350, 684 A.2d at 1064.

Therefore, the distinction between procedural or substantive due process analyses is not really relevant in addressing irrebuttable presumptions. The key is whether an individual is afforded procedural due process before a protected right is deprived due to a presumption under the law. In Clayton, the plaintiff's driver's license was summarily suspended due to a medical condition and he was provided no opportunity prior to the revocation to rebut the presumption that he was medically unfit. Id. at 1060. The Court found that having been given the privilege of a driving license, he had a right to a hearing before his driving privileges license could be revoked. Id. at 1065. Further, because of the presumption created by the statute, a hearing post-revocation was essentially

meaningless.²³ Therefore, an entitlement given by the state could not be taken away arbitrarily by a statutory presumption that cannot be challenged in a meaningful manner.

This is the crux of the matter. In the present case, the Court has held that the Transition Statute did not deprive the Plaintiffs of a constitutionally protected entitlement of the nature implicated in Goss and its progeny. As discussed, the students were already removed from the regular classroom setting through the juvenile adjudication. The Transition Statute does not create an irrebuttable presumption that has the result of depriving the Plaintiffs of a protected interest or entitlement. Therefore, the Transition Statute does not violate the irrebuttable presumption doctrine.

E. The Transition Statute Does Not Violate The Due Process Principles Of The Pennsylvania Constitution.

The Plaintiffs assert that the Transition Statute violates the due process principles of the Pennsylvania Constitution based upon a perceived harm to their reputation. The Plaintiffs base this argument on their assertions that: (1) being assigned to an Alternate Education Setting harmed their reputation and (2) there was no opportunity for them to challenge or object to their assignment to an Alternate Education Setting. Therefore, the

²³ The Court noted that the right to a *de novo* hearing after the suspension of driving privileges was not sufficient due process.

[G]iven the nature of the matter currently before the courts, it cannot be gainsaid that any “meaningful” opportunity to be heard would here require that the licensee be permitted to present objections, not to the conclusion that he suffered an epileptic seizure, but rather to the presumption of incompetency to drive. While Appellee indeed had a forum in which to assert his claim that he was competent to drive, that forum was rendered meaningless as a result of the irrebuttable presumption of § 83.4(a) since under that regulation, the recall of the Appellee’s license was a forgone conclusion. Such a meaningless hearing certainly does not comport with even the minimal standards afforded under due process.

Clayton, 546 Pa. at 352, 684 A.2d at 1065 (citations omitted).

Plaintiffs were afforded no procedural due process protections that could have possibly prevented undue harm to their reputation.²⁴

1. R. v. Commonwealth of Pa. Dept. of Public Welfare.

The first step in the Court’s analysis is addressing whether or not there is a protected interest at stake. The Plaintiffs assert that the Pennsylvania Constitution places reputation in the group of fundamental rights protected by the state constitution. There is no dispute between the parties that the Pennsylvania Constitution treats reputation differently than the federal constitution. Both the Plaintiffs and the School District refer to R. v. Commonwealth of Pennsylvania Dept. of Public Welfare as the leading case addressing reputation. 535 Pa. 440, 636 A.2d 142 (1994).

In R., our state Supreme Court held that:

[I]n Pennsylvania, reputation is an interest that is recognized and protected by our highest state law; our Constitution. Section 1 and 11 of Article I makes explicit reference to “reputation,” providing the basis for this Court to regard it as a fundamental interest which cannot be abridged without compliance with constitutional standards of due process and equal protection.

Id. at 535 Pa. 440, 636 A.2d 146.

In R., the Montgomery County Office of Children and Youth investigated R. for suspected sexual child abuse of his daughter. Id. at 535 Pa. 444, 636 A.2d 142. During

²⁴ The Court believes that the Plaintiffs and the School District mischaracterize this particular claim by limiting it entirely to due process principles of the Pennsylvania Constitution. While it is true that the United States Supreme Court held that reputation alone is not a protected right, the Pennsylvania Constitution does. As a result, the 14th Amendment of the U.S. Constitution protects a Pennsylvania’s citizen’s interest in reputation as a result of the explicit protection afforded by the Pennsylvania Constitution. See R. v. Commonwealth of Pennsylvania Dept. of Public Welfare, 535 Pa. 440, 636 A.2d 142 (1994). Therefore, once the Pennsylvania Constitution gives its citizens property interests, such as reputation, both federal and state constitution due process principles protect that interest from arbitrary deprivation. In the case of reputation, the due process analysis is the same under federal and state law. Id. 535 Pa. at 462-463, 636 A.2d at 153 (1994).

the investigation, R. refused to be interviewed; however, the office concluded after reviewing medical and psychological evaluations and interviews with his daughter and wife, that abuse of his daughter was “indicated”. Id. Such a notation on a report signifies an administrative determination that there was substantial evidence of abuse. Id. at n.1.

R. challenged the report and requested that the notation be expunged from his record. Id. The office refused to comply and R. filed an administrative appeal of the decision. Id. 535 Pa. at 445, 636 A.2d at 142. As a result of the appeal, R. was provided with the opportunity for an administrative hearing where testimony was taken from the child, a psychologist and agency consultant. Id. During the hearing, the child gave her testimony *in camera* over the objection of R., who believed he had a constitutional right to be present and confront the child during her testimony. Id. At the conclusion of the hearing, the presiding officer refused to expunge the report and R. appealed the decision.

One of R’s grounds for appeal was that the notation of abuse in his file was available to numerous persons and agencies, thus it was alleged “R. lives under the cloud of a stigma that threatens his reputation.” Id. 535 Pa. at 454, 636 A.2d at 149. First looking to the federal constitution, the Court found that the federal constitution did not recognize reputation alone as deserving of the procedural due process protections of the Fourteenth Amendment. But, the Pennsylvania Constitution specifically recognized reputation as a constitutionally protected interest and such an interest could not be deprived without procedural due process. Id. Once the Court found that R. has a constitutionally protected interest in his reputation, it began with a Fourteenth Amendment analysis by examining the extent of which that interest was deprived.²⁵

²⁵ In Mathews v. Eldridge the United States Supreme Court set forth three factors to be considered in determining whether appropriate due process is being afforded: (1) the private interest that will be affected

Therefore, the next question the Court must address is whether the Plaintiffs' reputations are truly affected by the Transition Statute.

2. The Juvenile Adjudication Is Responsible For Any Negative Effect on the Plaintiffs' Reputations.

Plaintiffs assert in their pleadings that their reputations were harmed by their transfer to an Alternate Education Setting. The School District and the General Assembly assert there is no harm inflicted on the Plaintiffs' reputations as a result of their assignments to an Alternate Education Setting. The essence of their arguments is that the juvenile adjudication is solely responsible for any harm to the Plaintiffs' reputations. Therefore, their transfer to an Alternate Education Setting is merely a part of the juvenile adjudication process. The School District further asserts that all the procedural protections necessary were afforded at the juvenile adjudication. The Court agrees with the School District.

The Transition Statute and the attendant assignment of the Plaintiffs to an Alternate Education Setting do not inflict a separate and distinct harm to the Plaintiffs' reputations. Any harm that attached to the Plaintiffs' reputation was inflicted by their commission of a criminal act under which they were adjudicated delinquent and placed into placement. The Transition Statute is just another step in the rehabilitative journey of the Plaintiffs that began with the original juvenile adjudication. The statute does nothing more than act as an administrative process by which the Plaintiffs are evaluated and sent to the appropriate education setting. Therefore, the Court finds that the Plaintiffs'

by the state action, (2) the risk of erroneous deprivation of such interest through procedures used and the probable value of any additional procedures, and (3) the government's interest, including the fiscal and administrative burdens that additional or substitute procedural protections would entail. 424 U.S. 319, 96 S.Ct. 893).

reputations suffered a deprivation when they were adjudicated, at which time they received maximum amount of procedural due process protections.²⁶

IV. CONCLUSION

For the reasons more fully set forth above, the cross-motion for summary judgment and preliminary objections of the School District are **granted** and the Court finds in favor of the School District on counts I, II, III and IV and the Plaintiffs' amended complaint is dismissed. The Plaintiffs' motion for summary judgment is **denied**.

BY THE COURT:

C. DARNELL JONES, J.

Dated: January 30, 2004

²⁶ As the Attorney General notes, cases where reputation has been examined in a constitutional context deal with the stigmas of criminal activity, sexual or physical abuse and psychiatric commitments. See R., 535 Pa. 440, 636 A.2d 142 (1994); Pennsylvania Bar Association v. Commonwealth, 607 A.2d 850 (Pa.Cmwlth. 1992)(associating attorneys with fraudulent insurance claims); Simon v. Commonwealth, 659 A.2d 631 (Pa.Cmwlth 1995)(associating individuals with organized crime); Carlucci v. Mazaleski, 568 Pa. 471, 798 A.2d 186 (2002)(publication of a dismissed protection from abuse petition); Wolfe v. Beal, 477 Pa. 477, 384 A.2d 1187 (1978)(publication of unlawful commitment to a psychiatric institution). Even if the Court were to find that the Plaintiffs' assignment to an Alternative Education Setting had a negative effect on the Plaintiffs' reputations, the Court questions whether the possible negative effect would rise to a level on par with the stigmas dealt with in the aforementioned cases; thereby, warranting constitutional protection.